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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No 662. 247.

F. S. BOWKER, MANAGING OWNER OF SCHOONER "WILLIAM H. DAVENPORT," APPELLANT,

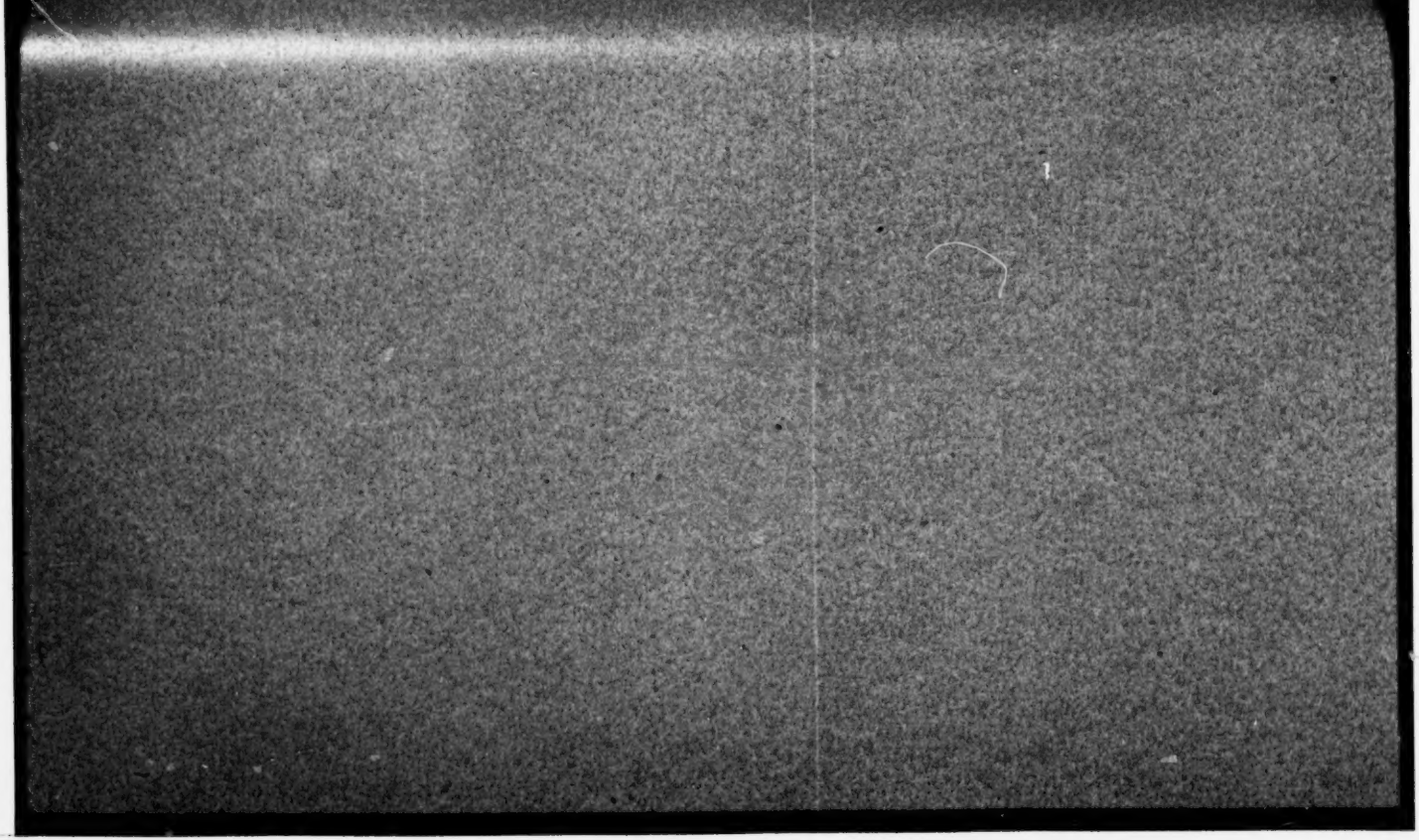
vs.

THE UNITED STATES, OWNER OF THE LIGHT-HOUSE TENDER "AZALEA."

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

FILED FEBRUARY 6, 1901.

(18,047.)



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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 9, 1901.

1 United States District Court, District of New Jersey.

F. S. BOWKER, Managing Owner of the Schooner William H. Davenport, Libelant, Appellant,
against
THE UNITED STATES OF AMERICA, Owner of the Light-house Tender Azalea, Appellee.
} Cross-libel.

To the honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

I hereby certify the questions of jurisdiction involved in this appeal, and the circumstances under which such questions have arisen for decision in this court, as follows:

1. On November 3rd, 1899, the United States of America, by J. Kearny Rice, attorney for the district of New Jersey, filed a libel in this court against the schooner William H. Davenport, her tackle, apparel, and furniture, and against all persons intervening therein, in a cause of collision, civil and maritime, seeking to recover the sum of $5,000 damages, alleged to have been sustained by the light-house tender Azalea in a collision with the said schooner on October 2nd, 1899, off Cornfield Point light-ship, in Long Island sound. It was averred in the libel that the collision was in no way caused by the fault or negligence of those on board the light-house tender Azalea, but that it was solely due to the carelessness and negligence of those in charge of the schooner William H. Davenport in certain particulars stated. The libel further recited that its premises
2 were true and were within the admiralty and maritime jurisdiction of this court, and it concluded with the formal prayer "that process in due form of law and according to the practice of this court may issue against the said schooner William H. Davenport, her tackle, apparel, and furniture, and that all persons interested therein may be cited to appear and answer on oath the matters aforesaid, and that the schooner William H. Davenport may be condemned and sold to pay libelant's claim, with interest and costs, and that the court will otherwise right and justice administer in the premises."

The libel was signed by J. Kearny Rice, the then United States attorney for the district of New Jersey. A copy of the said libel is hereto attached and made a part hereof.

2. Process in due form was issued against the said schooner William H. Davenport according to the prayer of the libel, and afterwards, to wit, on November 8th, 1899, the marshal of this district filed his return of said process, certifying that on November 4th, 1899, he had made due attachment of the said schooner pursuant to the direction contained in the writ issued to him, and that said vessel was then in his custody.

3. On November 22nd, 1899, F. S. Bowker, managing owner of said schooner, by Charles H. Potter, his agent, filed in this court a claim to said schooner on behalf of the owners thereof, and on the

same day he filed a stipulation for costs in the sum of $250, and a stipulation for value in the sum of $5,000, conditioned to abide the decree of the court, with approved surety; and thereupon, by order of the court, the schooner was released from the custody of
3 the marshal under the process of this court, and was restored to the possession of her said owners.

Copies of the claim, the stipulation for costs, and the stipulation for value are hereto attached and made a part hereof.

4. On December 11th, 1899, the said claimant, F. S. Bowker, filed his answer to the said libel in this court, denying that the collision mentioned in the libel was caused or contributed to by those in charge of the schooner, and alleging that the said collision and the damage resulting therefrom were caused wholly by the fault of the said steamer Azalea and of those in charge of her, in certain particulars which were stated. The answer concluded with a prayer that the libel be dismissed with costs. A copy of the said answer is hereto attached and made a part hereof.

5. On December 29th, 1899, the said F. S. Bowker, for and in behalf of himself and his co-owners, filed a cross-libel in this court against the United States seeking to recover the sum of $6,000 damages alleged to have been sustained by the schooner William H. Davenport and by her cargo in the collision hereinbefore referred to. It was alleged in the cross-libel that the collision was wholly due to the negligence and fault of the said steamship Azalea and of those in charge of her, in certain respects which were particularly set forth. The prayer of the said cross-libel asked "that a citation according to the course and practice of this honorable court in causes of admiralty and maritime jurisdiction may issue to the said respondents above named, citing and admonishing them to appear and answer all and singular the matters aforesaid, and that this honorable court shall pronounce for the
4 damages with interest and costs, and will grant a stay of all further proceedings in the action of the said respondent brought by it in this honorable court against the schooner Wm. H. Davenport by the filing of a libel against said schooner on November 3, 1899, until security be given by said respondent, pursuant to the admiralty rules of the Supreme Court of the United States and the practice of this honorable court, to respond for the damages claimed in this cross-libel, and that this honorable court will give to the cross-libelant such other and further relief as in law and justice he may be entitled to receive, this said action being a counter-claim arising from the same cause of action for which the original libel was filed against the said Wm. H. Davenport." A copy of the said cross-libel is hereto attached and made a part hereof.

6. Pursuant to the prayer of the said cross-libel, a citation was issued out of this court on December 29th, 1899, and was served on J. Kearny Rice, then United States attorney for this district, who was the proctor of record for the libelant in the original libel. A copy of the said citation is hereto attached and made a part hereof.

7. The United States attorney on February 14th, 1900, filed the following notice of motion entitled in the original cause, viz: "Notice

is hereby given that I shall move before said court to quash the citation served upon me as United States attorney in this cause upon the ground that no citation can issue against the United States in this matter, and also that the service of the citation upon me as United States attorney for the district of New Jersey is without warrant of law." A copy of said notice is hereto attached and made a part hereof.

5 8. This motion came regularly before the court for hearing and was argued by counsel, and on December 17th, 1900, I filed a written decision holding that the said cross-libel could not be maintained, because the court had no jurisdiction to entertain the cause or to enter a decree as prayed for against the United States, as will more fully appear from the copy of said decision which is hereto attached and made a part hereof. By a final decree entered herein December 17th, 1900, it was by the court adjudged that the said citation be quashed, and that the said cross-libel be dismissed with costs. A copy of the said final decree is also hereto attached and made a part hereof.

9. On January 11th, 1901, an appeal by the said cross-libelant to the Supreme Court of the United States was duly allowed by me on the questions of jurisdiction argued before me in the district court and specified in the assignment of errors filed herein, and pursuant to the statutes and rules of court touching such appeals the said questions are now, to wit, this 11th day of January, 1901, and in the same term at which the said final decree was entered, certified to the Supreme Court, viz:

(1.) Did the United States, by coming into this court and filing and maintaining a libel as owner of the Azalea against the schooner William H. Davenport, as above stated, submit itself to the jurisdiction of the court and to the ordinary rules and practice in admiralty causes, so as to authorize the court to entertain a cross-libel by the owner of the schooner against the United States, of which notice was given to the United States attorney, as stated, and to enter an affirmative decree against the United States thereunder, as prayed

6 in said cross-libel, if the findings of fact should warrant such a decree?

(2.) Did the service of the citation issued under the cross-libel, by delivery thereof to the United States attorney, the proctor of record for the libelant in the original libel, give this court jurisdiction over the United States under the cross-libel?

(3.) Was the United States, as the original libelant, bound, under the provisions of the 53rd rule in admiralty, to appear and submit itself to the jurisdiction of the court under the cross-libel, after service of process thereunder on its proctor of record in the original suit; and in default of such appearance, had the court power to stay proceedings under the original libel?

(4.) Did this court, on the facts above stated, have jurisdiction of the cross-libel and of the United States thereunder?

(5.) Could the cross-libel, on the facts above stated, be maintained in this court against the United States?

Wherefore the foregoing questions are respectfully certified to the Supreme Court of the United States for its decision.

January 11, 1901.

ANDREW KIRKPATRICK,
United States District Judge for the District of New Jersey.

7 To the Honorable Andrew Kirkpatrick, judge of the district court of the United States for the district of New Jersey:

The libel and complaint of the United States of America, as owners of the light-house tender Azalea, at the times hereinafter mentioned, against the three-masted schooner William H. Davenport, her tackle, apparel, and furniture, and against all persons intervening for their interest therein, in a cause of collision, civil and maritime, alleges as follows:

First. That the libelants are and were, at the time of the collision herein described, the owners of the said light-house tender Azalea, and that the three-masted schooner William H. Davenport is now within the jurisdiction of this honorable court.

Second. That on the 2nd day of October, A. D. 1899, at about twelve o'clock m., the said light-house tender Azalea left the port of New York bound for the port of New Bedford.

And libelants further allege on information and belief that after leaving the harbor the light-house tender Azalea took a course which carried her near to and past the Cornfield Light vessel, so called, a course of about east one-half north, which course she held up to the time of the collision hereinafter mentioned. Said light-house tender Azalea was well and properly manned with competent master, officers, and crew, and her lights were properly set at sundown, and continued to burn brightly. The night was clear and a good one for seeing lights, and the wind blew N. N. E., a moderate breeze.

8 Third. At about 10.20 o'clock p. m. the lights of the schooner which afterward proved to be the schooner William H. Davenport aforesaid were observed about one-half point on said light-house tender's port bow, about two miles off. The helm of the light-house tender Azalea was ported and kept off one point, losing the schooner's green light and bringing her red light about one and one-half points on the port bow of the said light-house tender Azalea, and the lights continued the same as the vessels approached.

The said Azalea was not more than one hundred yards distant from the said schooner William H. Davenport, when the said schooner's green light came suddenly in sight, almost ahead. Immediately the helm of the said light-house tender Azalea was placed hard-a-starboard, and at the same time the engines of the said light-house tender Azalea were stopped and reversed, and immediately afterwards the two vessels came into collision. The said light-house tender Azalea was struck by said schooner William H. Davenport amidships and abreast of the main rigging.

Fourth. By means of said collision the stem above the water line upon the said light-house tender Azalea and three feet below the top rail was broken and bent direct to starboard and aft about four feet, the side bow plates being bent at right angles and back to the

collision bulkhead, and the hawse pipes were driven up inboard about fifteen inches.

Fifth. The said collision was in no way caused by the fault or negligence of those on board of the light-house tender Azalea, but was solely due to the carelessness and negligence of those in charge
9 of the schooner William H. Davenport aforesaid, in that (1) the said schooner William H. Davenport did not hold her course, but seeing the red light of the light-house tender aforesaid, and running free, within a short distance of the said light-house tender Azalea, the helm of the said schooner William H. Davenport was placed hard-a-starboard and ran directly across the track of the said Azalea, and in other respects, which will be shown on the trial of this suit.

Sixth. By reason of the said collision the said United States of America have suffered damages to its light-house tender to the amount of five thousand dollars.

All and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court. Wherefore the libelants pray that the process in due form of law and according to the practice of this court may issue against the said schooner William H. Davenport, her tackle, apparel, and furniture, and that all persons interested therein may be cited to appear and answer on oath the matters aforesaid, and that the said schooner William H. Davenport may be condemned and sold to pay libelant's claim, with interest and costs, and that the court will otherwise right and justice administer in the premises.

J. KEARNY RICE,
U. S. Attorney, District of New Jersey.

10 [Endorsed:] United States district court, district of New Jersey. U. S. *v.* Schooner Wm. H. Davenport, her tackle, apparel, etc. (Copy.) Libel for collision. J. Kearny Rice, U. S. att'y. Filed Nov. 3, 1899, at 9 o'clock a. m. George T. Cranmer, clerk.

11 District Court of the United States for the District of New Jersey.

THE UNITED STATES OF AMERICA
vs.
THE SCHOONER WILLIAM H. DAVENPORT.

And now Chadwick & Potter, intervening as agents in the port of New York for the interest of Frank S. Bowker and others in the said schooner, appears before the honorable court and makes claim to the said schooner, &c., as the same are attached by the marshal under process of this court, at the instance of the United States, and the said Chadwick and Potter aver that they were in possession of the said schooner at the time of the attachment thereof, and that the persons above named are the true and *bona fide* owners of the said schooner, and that no other person is the owner thereof, and the said

claimants are true and lawful bailees thereof as agents. Wherefore they pray to defend accordingly.

CHADWICK & POTTER,
By CHAS. H. POTTER.

CONVERS & KIRLIN,
Proctor- for Claimant-.

12 SOUTHERN DISTRICT OF NEW YORK, ss.

Charles H. Potter, being duly sworn, deposes and says that he resides 429 Fifth street, Brooklyn; that he is the junior member of the firm of Chadwick and Potter above named; that the owners of said schooner reside in Phippsburg, Maine, and that this deponent is duly authorized to put in this claim in behalf of the owners of the said schooner, and that the said claim is true of the knowledge of this deponent, except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

CHAS. H. POTTER.

Sworn to and subscribed this 8th day of November, A. D. 1899, before me—

JAMES T. KILBRETH,
[L. S.] *Notary Public, New York County.*

13 [Endorsed:] United States district court, district of New Jersey. Chadwick & Potter, claimants of the schr. William H. Davenport, *asm.* The United States of America. (Copy.) Claim of agent. Convers & Kirlin, proctors for claimant-. Filed Nov. 22, 1899, at 9.30 o'clock a. m. George T. Cranmer, clerk.

14 District Court of the United States for the District of New Jersey.

Filed and recorded the — day of ——, —.

Stipulation for Claimants' or Respondents' Costs, Entered into Pursuant to the Rules and Practice of This Court.

Whereas a libel was filed in this court on the third day of November, 1899, by the United States against the schooner "William H. Davenport" for the reason and causes in the said libel mentioned; and

Whereas a claim to the said vessel has been filed by Chadwick & Potter, and the parties hereto hereby consenting that, in case of default or contumacy on the part of the claimants or their surety, execution for the sum of two hundred and fifty ($250.00) dollars may issue against their goods, chattels, and lands:

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern that the claimants herein and the stipulator undersigned, American Surety Company of New York, of 100 Broadway, in the city of New York, and by occupation a surety company, shall be, and it is hereby, bound in the sum of two hun-

dred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court or upon appeal by
15 the appellate court.

AMERICAN SURETY COMPANY OF NEW YORK,
By DAVID B. SICKELS, *Vice-President.*
CORTLANDT VAN RENSSELAER,
Attorney.

67156.

Taken and acknowledged this 20th day of November, 1899, before me—

[L. S.]

K. J. PEIRCEY,
Notary Public, Kings Co.

[5c. internal-revenue stamp.]

SOUTHERN DISTRICT OF NEW YORK, *ss:*

David B. Sickels, vice-president of American Surety Company of New York, the above stipulator, being duly sworn, deposes and says that said company is a domestic corporation of the State of New York and is worth the sum of five hundred ($500) dollars over and above all its debts and liabilities.

DAVID B. SICKELS.

Sworn to before me this 20th day of November, 1899.

[L. S.]

K. J. PEIRCEY,
Notary Public, Kings Co.

Certificate filed in New York, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, Rockland, and Nassau Cos.

16 [Endorsed:] United States district court, district of New Jersey. The United States *v.* The Schooner William H. Davenport. (Copy.) Stip. for claimants' costs. Filed Nov. 22, 1899, at 9.30 o'clock a. m. George T. Cranmer, clerk.

17 District Court of the United States for the District of New Jersey.

Filed and recorded the — day of ——, —.

Stipulation for Value, Entered into Pursuant to the Rules and Practice of This Court.

Whereas a libel was filed on the third day of November, 1899, by the United States against the schooner "William H. Davenport" for the reason and causes in the said libel mentioned; and

Whereas claimant of said vessel has filed due claim thereto, and also stipulations for costs and value, the latter in the sum of five thousand ($5,000) dollars, the agreed value thereof, as appears from the

stipulation at the foot hereof, and the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the claimant- or their surety execution for the above-agreed amount, with interest thereon from this date, may issue against their goods, chattels, and lands:

Now, therefore, the condition of this stipulation is such that if the claimant- herein and American Surety Company of New York, of 100 Broadway, in the city of New York, and by occupation a surety company, the stipulator undersigned, shall abide by all orders of the court, interlocutory or final, and pay the amount awarded by
18 the final decree rendered by this court or by any appellate court if an appeal intervene, with interest, then this stipulation to be void; otherwise to remain in full force and virtue.

AMERICAN SURETY COMPANY OF NEW YORK,
[L. S.] By DAVID B. SICKELS, *Vice-President.*
CORTLANDT VAN RENSSELAER,
Attorney.

67155.

Taken and acknowledged this 20th day of November, 1899, before me—

K. J. PIERCEY,
Notary Public, Kings Co.

[Ten-c. internal-revenue stamp.]
[Two-c. internal-revenue stamp.]
[One half-c. internal-revenue stamp.]

19 SOUTHERN DISTRICT OF NEW YORK, *ss:*

David B. Sickels, vice-president of American Surety Company of New York, the above stipulator, being duly sworn, deposes and says that said company is a domestic corporation of the State of New York, and is worth the sum of ten thousand dollars over and above all its debts and liabilities.

DAVID B. SICKELS.

Sworn to before me this 20th day of November, 1899.

J. K. PEIRCEY,
[L. S.] *Notary Public, Kings Co.*

Certificate filed in New York, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, Rockland, and Nassau Cos.

20 [Endorsed:] United States district court, district of New Jersey. The United States *v.* The Schooner William H. Davenport. (Copy.) Stipulation for value. Filed Nov. 22d, 1899, at 9.30 o'clock a. m. George T. Cranmer, clerk.

21 District Court of the United States, District of New Jersey.
In Admiralty.

To the Honorable Andrew Kirkpatrick, judge of the district court of the United States within and for the district of New Jersey:

The answer of F. S. Bowker, of Phippsburg, district of Maine, managing owner of the schooner "William H. Davenport," to the libel of the United States of America, owner of the steamer known as the light-house tender "Azalea," in a cause of collision; and thereupon the said claimant answers and alleges as follows:

First. That as to the matters contained in the first article of said libel, your respondent admits the same to be true.

Second. That as to the matter contained in the second article of said libel, your respondent denies that the wind was north-northeast. He admits that the night was clear and a good one for seeing lights, but as to the other matters therein contained he is ignorant, and so he can neither admit nor deny the same, but leaves the libellant to its proof if material.

Third. That as to the matters and allegations contained in the third article of said libel, the same are, as a whole, so untruly stated that your respondent denies the truth of the same as though each allegation were expressly denied, excepting so much as may be hereinafter admitted.

Fourth. That as to the matter and allegations contained in
22 the fourth article of said libel your respondent is ignorant, and therefore unable to admit or deny the same, but leaves the libellant to its proof if material.

Fifth. Your respondent denies the allegations contained in the fifth and sixth articles of said libel, except the jurisdiction of this honorable court, which it admits.

Sixth. And your respondent, further answering, says that on October 2, 1899, a collision took place between the schooner "William H. Davenport" and the steamer "Azalea," a light-house tender. The true facts relating to said collision are as follows:

On October 2, 1899, the schooner "William H. Davenport" was on a voyage from South Gardner, Maine, to New York with a cargo of lumber. At sundown her side lights were lighted and put in their proper places and continued properly set and brightly burning until the collision hereinafter described.

At 8 p. m. the port watch came on deck, the wind at the time being about northwest by north. At 10 p. m. the man at the wheel and the lookout were changed on board of said schooner, and each position was filled by another competent man. The course of the schooner at that time was west by south, the schooner being on the starboard tack close hauled by the wind. Soon after 10 p. m. the mast-head light of a steamer (which afterwards proved to be the steamer "Azalea") was seen by those on the schooner on her starboard or weather bow. Not long after both of the steamer's side lights came in view more on the weather or starboard bow of the schooner "William H. Davenport." Soon after the said steamer shut in her green side light and showed only her red, and without

other change came on at a high rate of speed, striking said
23 schooner "William H. Davenport," which all of the time held her course, on her starboard side between the fore and main rigging, cutting well into her hull and causing her to fill with water.

Seventh. That after the said collision the said schooner "William H. Davenport" was in need of assistance and the said steamer "Azalea" did not lay by the said schooner "William H. Davenport" or give her name, although requested by those on board of her so to do, and although the same could have been done without serious danger to the "Azalea."

That by an act of Congress passed in 1890, by reason of the failure so to do, the said steamer "Azalea" shall be held in fault for said collision in the absence of clear proof to the contrary.

Eighth. That the said collision and the damage resulting therefrom was caused wholly by the fault of the said steamer "Azalea" and those in charge of her in not keeping clear of a vessel under sail: that the said schooner "William H. Davenport" held her course and was wholly without fault, and those on board of her did all that could have been done to avoid a collision.

Ninth. That all and singular the premises are true and with the admiralty and maritime jurisdiction of this honorable court.

Wherefore your respondent prays that the aforesaid libel may be dismissed with costs.

CONVERS & KIRLIN,
CARVER & BLODGETT,
Proctors for Respondent.

24 STATE AND CITY OF NEW YORK, } ss:
Southern District of New York, }

Charles H. Potter, being duly sworn, deposes and says that he is a member of the firm of Chadwick & Potter, agents in the port of New York for F. S. Bowker, of Phippsburg, Maine, managing owner of the schooner William H. Davenport; that he has read the foregoing answer and believes it to be true. The sources of his information and the grounds of his belief are statements made to deponent by the master and officers of the schooner William H. Davenport. The reason this verification is not made by the said F. S. Bowker is that he is a resident of the district of Maine, and is not within one hundred miles of the district of New Jersey or the southern district of New York.

CHAS. H. POTTER.

Sworn to before me this 8th day of December, 1899.
[SEAL.] JAMES T. KILBRETH,
Notary Public, New York County.

25 [Endorsed:] United States district court. United States of America against Schooner William H. Davenport. (Copy.) Answer. Convers & Kirlin, Carver & Blodgett, proctors for respondent, 5 Beekman St., New York, N. Y. Filed Dec. 11th, 1899, at 9 o'clock a. m. George T. Cranmer, clerk.

26 District Court of the United States, District of New Jersey.
In Admiralty.

To the Honorable Andrew Kirkpatrick, judge of the district court of the United States within and for the district of New Jersey:

F. S. Bowker, of Phippsburg, district of Maine, managing owner of the schooner "William H. Davenport," for and in behalf of himself and the other owners of said schooner and for and in behalf of the owner of the cargo of lumber late on board of said schooner, exhibits this his cross-libel and complaint against the United States of America, owner of the steamer known as the light-house tender "Azalea," in a cause of collision, this action being a cross-libel brought under the admiralty rule 53 of the Supreme Court of the United States, being a counter-claim arising out of the same cause of action as the suit brought by the United States against the said schooner "William H. Davenport," in a cause of collision by a libel filed November 3, 1899, in said court, and thereupon the said cross-libellant doth allege and articulately propound as follows, viz:

First. That the said schooner "William H. Davenport," owned by your cross-libellant and others, was and is a three-masted schooner; that on September 25, 1899, the said schooner, loaded with a cargo of lumber, left the port of South Gardner, Maine, bound for New York; that the said vessel was then stout, staunch, and strong, well manned and equipped, and so continued until after the collision hereinafter described.

Second. That on October 2nd (the said schooner then
27 being near the entrance to Long Island sound), at sundown, her side lights were lit, placed in their proper positions, and continued lighted and brightly burning until after the facts hereinafter narrated; that at eight p. m. the port watch came on deck, the wind at the time being about northwest by north and baffling and the weather clear, the said schooner being then on the starboard tack. A competent man was placed at the helm and another competent seaman on the lookout. At 10 p. m. the lookout and the helmsman were relieved, competent seamen going to each position. At this time the wind was from northwest by north to northwest, somewhat baffling, the night clear, and the vessel heading her course west by south, the schooner still being on the starboard tack. Soon after ten p. m. the mast-head light of a steamer (which afterwards proved to be the steamer "Azalea") was sighted and reported by those on board of the schooner "William H. Davenport," bearing on her starboard or weather bow. Not long after, the side lights of said steamer were seen, but more on the weather bow of the schooner. Soon after, the said steamer shut in her green light and showed only her red light, and, without change, came on at a high rate of speed, striking the said schooner "William H. Davenport" on the starboard side between the fore and the main rigging, cutting well into the schooner's hull and causing her to fill with water, but, by reason of her being loaded with lumber, said schooner did not sink. During all of this time the said schooner held her course.

Third. That the said collision took place at or near 10.30 p. m.,

about one mile from Cornfield Point light-ship. The said
28 schooner had all sail set, was on the starboard tack, and was making about seven miles per hour. The tide was setting to the eastward about one and one-half (1½) knots; the night was clear and the wind from northwest by north to north northwest.

Fourth. That the said steamer "Azalea" did not lay by the said schooner "William H. Davenport" or give her name, although requested by those on board of her so to do, and although the same could have been done without serious danger to the "Azalea;" that by an act of Congress passed in 1890 by reason of the failure so to do the said steamer "Azalea" shall be held in fault for said collision in the absence of clear proof to the contrary.

Fifth. That the said collision and the damage resulting therefrom was caused wholly by the negligence and fault of said steamer "Azalea" and those in charge of her, among other faults, viz:

I. Being a steam vessel, in not keeping clear of a vessel under sail.

II. In changing her course in the manner that she did.

III. In not having a competent lookout.

IV. In not having competent officers in charge of her deck.

V. In not standing by and rendering what assistance should have been required under the act of 1890.

VI. Other faults to be shown at the trial of this cause.

Sixth. That the said schooner "William H. Davenport" by reason of said collision was rendered unmanageable and was taken in tow by a steamtug and placed on the beach at the entrance of New Haven harbor, where temporary repairs were made in order
29 to enable the vessel to complete her voyage to New York.

Seventh. That the said schooner "William H. Davenport" held her course as required by law, and was without fault, and everything was done by those on board of her that could have been done to avoid a collision.

Eighth. That by reason of the said collision it became necessary to employ a steamtug to beach the vessel at New Haven to make temporary repairs there to the said schooner, and that the expense of said repairs, together with damage to the vessel and cargo and proper charges for detention while repairing, will amount to the sum of about six thousand dollars ($6,000).

Ninth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore your libellant prays that a citation, according to the course and practice of this honorable court in causes of admiralty and maritime jurisdiction, may issue to the said respondents above named, citing and admonishing them to appear and answer all and singular the matters aforesaid, and that this honorable court shall pronounce for the damages, with interest and costs, and will grant a stay of all further proceedings in the action of the said respondent brought by it in this honorable court against the schooner "William H. Davenport" by the filing of a libel against said schooner on November 3, 1899, until security be given by said respondent, pursuant to the admiralty rules of the Supreme Court of

the United States and the practice of this honorable court, to
30 respond for the damages claimed in this cross-libel, and that this honorable court will give to the cross-libellant such other and further relief as in law and justice he may be entitled to receive, this said action being a counter-claim arising from the same cause of action for which the original libel was filed against the said "William H. Davenport."

CONVERS & KIRLIN,
CARVER & BLODGETT,
Proctors for Cross-libellant.

31 STATE AND CITY OF NEW YORK, }
Southern District of New York, } ss:

Charles H. Potter, being duly sworn, deposes and says that he is a member of the firm of Chadwick & Potter, agents in the port of New York for F. S. Bowker, of Phippsburg, Maine, managing owner of the schooner William H. Davenport; that he has read the foregoing cross-libel and believes it to be true. The sources of his information and the grounds of his belief are statements made to deponent by the master and officers of the schooner William H. Davenport. The reason this verification is not made by the said F. S. Bowker is that he is a resident of the district of Maine and is not within one hundred miles of the district of New Jersey or the southern district of New York.

CHAS. H. POTTER.

Sworn to before me this 8th day of December, 1899.

[SEAL.] JAMES T. KILBRETH,
Notary Public, New York County.

32 [Endorsed:] United States district court. F. S. Bowker, managing owner of schooner William H. Davenport, against United States of America, owner of steamer Azalea. (Copy.) Cross-libel. Convers & Kirlin, Carver & Blodgett, proctors for cross-libellant, 5 Beekman St., New York, N. Y. Filed Dec. 29, 1899, at 9 o'clock a. m. George T. Cranmer, clerk.

33 *Wm. H. Davenport.*

UNITED STATES OF AMERICA, }
District of New Jersey. }

The President of the United States of America to the marshal of the district of New Jersey, Greeting:

Whereas a cross-libel was filed in the district court of the United States for the district of New Jersey on the twenty-ninth day of December, in the year of our Lord one thousand eight hundred and ninety-nine, by—

F. S. Bowker, managing owner of the schooner William H. Davenport, her tackle, apparel, and furniture, against the United States of

America, owner of the steamer known as the light-house tender "Azalea," her engines, boilers, tackle, apparel, and furniture, and praying that a citation may issue against said respondents pursuant to the rules and practice of this court for the reasons and causes in the said libel mentioned:

You are, therefore, hereby commanded to cite and admonish the said respondents that they be and appear before the said court to be held at Trenton, in and for the district of New Jersey, on the twentieth day of February next, at ten o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to answer the said cross-libel and to make their allegations in that behalf; and what you shall have done in the premises do you then and there make return thereof, together with this writ.

34 Witness the Honorable Andrew Kirkpatrick, judge of said court, at the city of Trenton, in the district of New Jersey, this twenty ninth day of December, in the year of our Lord one thousand eight hundred and ninety-nine, and of our In-
[SEAL.] dependence the one hundred and twenty-fourth.

GEORGE T. CRANMER, *Clerk*,
p. F. R. BRANDT, *Deputy*.

Served the within citation on J. Kearny Rice, U. S. attorney, personally, on the 12th day of Feb'y, A. D. 1900, at Trenton, in the district of New Jersey, by delivering to and leaving with him a copy thereof, and at the same time showing him this original, with the seal of the court attached, and informing him of its contents.

GEO. D. BOWER,
Deputy U. S. Marshal.

Feb. 12, 1900.

Fees, $2.00.

35 [Endorsed:] United States district court. F. S. Bowker, managing owner of schooner William H. Davenport, against United States of America, owner of steamer Azalea. (Copy.) Citation. Convers & Kirlin, Carver & Blodgett, proctors for cross-libelant, 5 Beekman St., New York, N. Y. Filed Feb. 16th, 1900, at 2.40 o'clock p. m. George T. Cranmer, clerk.

36 United States District Court, District of New Jersey.

UNITED STATES
v.
THE SCHOONER WILLIAM H. DAVENPORT. } On Cross-libel.

Notice is hereby given that on Tuesday, the twentieth day of February instant, I shall move before said court to quash the citation served upon me as United States attorney in this cause, upon the ground that no citation can issue against the United States in this matter, and also that the service of the citation upon me as

United States attorney for the district of New Jersey is without warrant of law.

Respectfully, J. KEARNY RICE,
U. S. Attorney.

Dated February 12, 1900.

Messrs. Convers & Kirlin, 5 Beekman St., N. Y. city.
Messrs. Carver & Blodgett, Boston, Mass.

37 [Endorsed:] United States district court, district of New Jersey. The United States *vs.* Schr. William H. Davenport. Notice of motion. Filed Feb. 14, 1900, at 4 o'clock p. m. George T. Cranmer, clerk.

38 United States District Court, District of New Jersey. In Admiralty.

F. S. BOWKER, Managing Owner of the Schooner William H. Davenport,
v.
THE UNITED STATES OF AMERICA, Owner of the Lighthouse Tender Azalea. } Cross-libel.

David O. Watkins, U. S. attorney.
Convers & Kirlin. Carver & Blodgett, for claimants and cross-libelants.

Opinion.

KIRKPATRICK, *J.:*

On the second day of October, eighteen hundred and ninety-nine, the three-masted schooner W. H. Davenport and the steamer Azalea collided in Long Island sound, off the Cornfield Point light-ship. Subsequently the United States of America, the owner of the Azalea, caused a libel to be filed against the William H. Davenport for damages sustained by the Azalea in said collision, and now comes F. S. Bowker, the managing owner of the W. H. Davenport, with a cross-libel alleging that the Azalea was at fault, and praying that citation issue against the United States of America requiring them to appear and answer, that the court shall pronounce for damages against the United States and grant a stay of all further proceedings in the said action brought against the said William H. Davenport until security be given by the United States under the rules of the Supreme Court.

There was a formal issuance of the citation which was
39 served upon the United States district attorney for this district, who immediately gave the following notice:

"Notice is hereby given that I shall move before said court to quash the citation served upon me as United States attorney in this cause upon the ground that no citation can issue against the United States in this matter, and also that the service of the citation upon me as United States attorney for the district of New Jersey is without warrant of law."

It is conceded that the United States cannot be lawfully sued without its consent in any case; but it is insisted that when the Government voluntarily comes into court for the enforcement of a claim, it subjects itself to the rules regulating the practice of the court. Admiralty rule No. 53, which is especially relied on in this case, provides that "whenever a cross-libel is filed upon any counter-claim arising out of the original cause of action for which the original libel was filed, the respondent in the cross-libel shall give security in the usual amount and form to respond in damages as claimed in the cross-bill, unless the court on cause shown shall otherwise direct." The sole object of the rule is to protect the rights of the cross-libelant by compelling the respondent, the libelant in the original action, to give security for any damages which may be awarded against him. I have no doubt that the suit instituted by the Government must proceed in accordance with the rules regulating the practice of the court, nor that this court has the power to make all proper and necessary orders and decrees therein by which the Government must abide. If the cross-libel were properly filed and the citation legally served, so that the respondent was in court in that suit, the court might in its discretion require the respondent to give security under rule No. 53.

40 The rule confers no authority to file the cross-libel, and counsel distinctly disclaims any intention to ask the security for which it alone provides. Can the cross-libel be maintained? I think not. This is not a case analogous to the Siren, 7 Wall., 152, where the court was in possession of the *res* through voluntary action of the Government, nor to the Nuested Sonora de Ragla, 108 U. S., 52, where the vessel was seized by the United States and afterwards libelled by it as a prize of war, and in which damages were awarded against the U. S. because of wrongful seizure. The award was sustained in the Supreme Court because, to use the language of Chief Justice Waite, who delivered the opinion of the court, "we cannot but think that the United States have voluntarily submitted themselves to the court at the instance of the Spanish government, and the consent of the claimant for the purpose of having the question of damages growing out of the capture judicially settled according to the rules applicable to private persons in like cases." The submission in this case was made by the chief executive of the government, and the court, considering the question of his right, hesitated to affirm it on general principles, and only did so under the special circumstances of the case. The rule is well settled that the consent which alone enables an independent suit to be brought against the Government or its property must be given by the legislative body, and without the authority of Congress the Government's right of exemption cannot be waived by any of its officers.

Case *v.* Teemett, 11 Wallace, 202.
Carr *v.* U. S., 96 U. S., 433 (438).
U. S. *v.* Lee, 106 U. S., 196 (205).

41 In the case at bar not only has the Government not submitted itself to the jurisdiction of the court, but the prayer of the libellant is that the court awards process against the United States compelling them to appear and answer the complaint made against them. There is no law authorizing the service of this writ upon the United States district attorney, and such service must be set aside. The desirability of having determined at one and the same time all the questions of liability for the collision which is the subject-matter of the original libel has been urged on the court as a reason why it should obtain or retain jurisdiction of the whole case. In Schellinger *v.* U. S., 155 U. S., 166, Mr. Justice Brewer, speaking for the court, after reciting that the United States cannot be sued without their consent, says: "Beyond the letter of such consent the courts may not go, no matter how beneficial they may deem or in fact might be their possession of a larger jurisdiction over the liabilities of the Government." In my opinion the cross-libel cannot be maintained.

ANDREW KIRKPATRICK, *Judge.*

42 [Endorsed:] United States dist. court, district of New Jersey. Bowker *vs.* The United States. (Copy.) Opinion. Filed Dec. 17, 1900, at 9 o'clock a. m. George T. Cranmer, clerk.

43 United States District Court, District of New Jersey.

THE UNITED STATES OF AMERICA *v.* THE SCHOONER WILLIAM H. DAVENPORT.	In Admiralty. Order to Set Aside Citation and to Dismiss Cross-libel.
F. S. BOWKER, Managing Owner of the Schooner William H. Davenport, *against* THE UNITED STATES OF AMERICA, Owner of the Light-house Tender Azalea.	

This matter being opened to the court, and the court having heard the parties through their respective counsel, and it appearing that the citation heretofore served upon J. Kearny Rice, former United States attorney for said district, upon the cross-libel heretofore filed in said cause, by F. S. Bowker, managing owner of the schooner William H. Davenport, was illegal and without authority issued and so served, and that the said cross-libel cannot be maintained:

It is on this seventeenth day of December, nineteen hundred—

Ordered that the said citation be quashed, set aside, and for nothing holden, and that the said cross-libel be, and the same is hereby, dismissed with the costs.

On motion of David O. Watkins, United States attorney.

Let the above order be entered in the minutes.

ANDREW KIRKPATRICK, *Judge.*

44 [Endorsed:] United States district court, district of New Jersey. In admiralty. United States of America *v.* The Schooner Wm. H. Davenport. (Copy.) Order to set aside citation and to dismiss cross-libel. David O. Watkins, U. S. attorney. Filed Dec. 17th, 1900, at 11 o'clock a. m. George T. Cranmer, clerk.

45 United States District Court, District of New Jersey.

F. S. BOWKER, Managing Owner of the Schooner William H. Davenport, Cross-libelant, Appellant,
against
THE UNITED STATES OF AMERICA, Owner of the Lighthouse Tender Azalea, Appellee. } Cross-libel.

The above-named cross-libelant, F. S. Bowker, conceiving himself aggrieved by the decree entered in this cause on December 17th, 1900, does hereby appeal from the said decree to the Supreme Court of the United States, and files herewith an assignment of errors setting out separately and particularly each error asserted and intended to be urged. The cross-libelant offers herewith good and sufficient security that he will prosecute his appeal to effect, and if he fails to make his said appeal good will answer all damages and costs; and he thereupon prays that his said appeal may be allowed and that a certificate reciting the questions of jurisdiction upon which the said final decree was made may be sent up, duly authenticated, to the United States Supreme Court.

CARVER & BLODGETT,
CONVERS & KIRLIN
Proctors for Cross-libelant, Appellant.

The foregoing petition is granted and the appeal is allowed this 11 day of January, 1901.

ANDREW KIRKPATRICK,
U. S. Judge.

46 [Endorsed:] United States district court. F. S. Bowker, managing owner of the schr. William H. Davenport, cross-, lib'l't, app'l't, against The United States of America, owner of the lighthouse tender Azalea, appellee. (Copy.) Petition for appeal. Carver & Blodgett, Convers & Kirlin, proctors for cross-lib't, app'l't, 5 Beekman St., New York, N. Y. Filed Jan. 14th, 1901, at 9 o'clock a. m. George T. Cranmer, clerk.

47 United States District Court, District of New Jersey.

F. S. BOWKER, Managing Owner of the Schooner William H. Davenport,
against
THE UNITED STATES OF AMERICA, Owner of the Light-house Tender Azalea.
} Cross-libel.

The cross-libellant herein assigns error to the final decree herein of the United States district court for the district of New Jersey, filed December 17th, 1900, as follows:

First. In that the court quashed the citation issued herein and served upon the United States attorney, the proctor of record for the libellant in the original libel.

Second. In that the court dismissed the cross-libel herein with costs.

Third. In that the court held that this cross-libel against the United States could not be maintained, notwithstanding that the United States had filed and was promoting a civil suit of admiralty cognizance in this court in its own name against the schooner William H. Davenport.

Fourth. In that the court did not find that the United States, by coming into this court and filing and maintaining a libel, as the owner of the Azalea, against the schooner William H. Davenport, submitted itself to the jurisdiction of the court, so as to authorize the court to entertain a cross-libel by the owner of the schooner against the United States, of which notice was given to the United States
48 attorney, and to enter an affirmative decree against the United States therein, as prayed in the said cross-libel, if the findings of fact should warrant such a decree.

Fifth. In that the court did not find that the United States, by coming into this court and filing and maintaining a libel as owner of the Azalea against the schooner William H. Davenport, submitted itself to the ordinary rules and practice in admiralty causes.

Sixth. In that the court did not find that the service of the citation issued under the cross-libel by delivery thereof to the United States attorney, the proctor of record for the libellant in the original libel, gave this court jurisdiction over the United States under the cross-libel.

Seventh. In that the court did not find that the United States, as the original libelant, was bound, under the provisions of the 53rd rule in admiralty, to appear and submit itself to the jurisdiction of the court under the cross-libel after service of process thereunder on its proctor of record in the original suit.

Eighth. In that the court did not find that, in default of the appearance of the United States after the service of process in the cross-libel on its proctor of record in the original suit, it had power to stay proceedings under the original libel.

Ninth. In that the court omitted and refused to hold that on the

facts stated in the certificate herein the court had jurisdiction of this cross-libel and of the United States thereunder.

CARVER & BLODGETT,
CONVERS & KIRLIN,
Proctors for Cross-libellant.

49 [Endorsed:] United States district court. F. S. Bowker, managing owner of the schr. William H. Davenport, against The United States of America, owner of the light-house tender Azalea. (Copy.) Assignment of errors. Carver & Blodgett, Convers & Kirlin, proctors for cross-l'b't, app'l't, 5 Beekman St., New York, N. Y. Filed Jan. 14, 1901, at 9 o'clock a. m. George T. Cranmer, clerk.

50 United States District Court, District of New Jersey.

F. S. BOWKER, as Managing Owner of the Schooner William H. Davenport,
against
THE UNITED STATES OF AMERICA, Owner of the Light-house Tender Azalea.
} Cross-libel.

Know all men by these presents that the City Trust, Safe Deposit and Surety Company of Philadelphia is held and firmly bound unto the above-named The United States of America in the sum of five hundred (500) dollars, to be paid to the said The United States of America; for the payment of which, well and truly to be made, it binds itself and its successors firmly by these presents.

Signed with its seal and dated at the city of New York the 11th day of January, 1901.

Whereas F. S. Bowker, managing owner of the schooner William H. Davenport, has prosecuted an appeal to the United States Supreme Court to reverse the decree rendered in the above-entitled suit by the judge of the United States district court for the district of New Jersey, made and entered in said court on the 17th day of December, 1900:

Now, therefore, the condition of this obligation is such that if the above-named appellant shall prosecute said appeal to effect and answer all damages and costs on failure to make his said ap-
51 peal good, then this obligation to be void; otherwise to be and remain in full force and virtue.

[5-c. inter. rev. stamp.]

THE CITY TRUST, SAFE DEPOSIT AND SURETY COMPANY OF PHILADELPHIA,
160 *Broadway, N. Y.*
JNO. A. SULLIVAN, *Vice-President.*
P. H. MOODY, *Ass't Secretary.*
[SEAL.]

The foregoing bond is approved this 11th day of January, 1901.
ANDREW KIRKPATRICK, *Judge.*

52 STATE, CITY, AND COUNTY OF NEW YORK, ss:

On this 11th day of January, A. D. 1901, before me personally appeared John A. Sullivan, to me known, who being by me duly sworn, did depose and say: That he resided in the city of New York; that he is the vice-president of the City Trust, Safe Deposit and Surety Company of Philadelphia, the corporation described in and which executed the above instrument; that he knew the seal of said corporation, that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said corporation do not exceed its assets, as ascertained in the manner provided by section 3, chapter 720, of the New York Session Laws of 1893.

And the said John A. Sullivan further said, that he was acquainted with Patrick H. Mooney and knew him to be the assistant secretary of said corporation; that the signature of said Patrick H. Mooney subscribed to said instrument is in the genuine handwriting of said Patrick H. Mooney, and was thereto subscribed by the like order of said board of directors and in the presence of him, the said John A. Sullivan, vice-president.

EMMA A. BENNETT,

[L. S.] *Notary Public, Kings County.*

Certificate filed in New York county, # 227.

At a regular meeting of the board of directors of the City Trust, Safe Deposit and Surety Company of Philadelphia, held in the city of Philadelphia, for the purposes of organization, on the eleventh day of May, A. D. 1897, the following resolutions were adopted:

On motion of Dr. Baker, duly seconded, Mr. Stephen Farrelly, of the city of New York, was duly elected a vice-president of the company, resident in the city of New York, in the State of New York, with full power to execute in the name of the company, and to affix the corporate seal and duly acknowledge the same, any and all bonds or contracts of suretyship that may be required and necessary to be executed in carrying on the business of the company, in the State of New York.

On motion of Dr. Baker, duly seconded by Mr. Sailer, Mr. John McAnerney, of the city of New York, was duly elected a vice-president of the company, resident in the city of New York, in the State of New York, with full power, in the absence of Mr. Stephen Farrelly, resident vice-president, to execute in the name of the company, and to affix the corporate seal and duly acknowledge the same, any and all bonds or contracts of suretyship that may be required and necessary to be executed in carrying on the business of the company, in the State of New York.

On motion of Dr. Baker, duly seconded by Mr. Sailer, Mr. John A. Sullivan, of the city of New York, was duly elected a vice-president of the company, resident in the city of New York, in the State of New York, with full power in the absence of Mr. Stephen Farrelly, resident vice-president, to execute in the name of the company, and

to affix the corporate seal and duly acknowledge the same, any and all bonds or contracts of suretyship that may be required and necessary to be executed in carrying on the business of the company, in the State of New York.

On motion of Dr. Baker, duly seconded by Mr. Sailer, Mr. John A. Sullivan was elected as assistant secretary of the company, in the city of New York, in the State of New York, and empowered to attest the corporate seal of the company to any and all bonds or contracts of suretyship which have been signed by Mr. Stephen Farrelly, or Mr. John McAnerney, its resident vice-presidents, in the conduct of the business of the company, in the State of New York.

At a regular monthly meeting of the board of directors of the City Trust, Safe Deposit and Surety Company of Philadelphia, held in the city of Philadelphia, on the ninth day of January, 1899, the following resolution was adopted:

On motion of Mr. Potts, duly seconded by Dr. Baker, Mr. Patrick H. Mooney was elected as assistant secretary of the company, in the city of New York, in the State of New York, and empowered to attest the corporate seal of the company to any and all bonds or contracts of suretyship which have been signed by Mr. Stephen Farrelly, or Mr. John McAnerney, or Mr. John A. Sullivan, its resident vice-presidents, in the conduct of the business of the company, in the State of New York.

At a regular meeting of the board of directors of the City Trust, Safe Deposit and Surety Company of Philadelphia, held in the city of Philadelphia, for the purposes of organization, on the sixteenth day of May, A. D. 1900, the following resolution was adopted:

On motion of General Wagner, duly seconded, the following gentlemen were unanimously re-elected as vice-presidents and assistant secretaries in the various places named:—Vice-presidents at New York, Stephen Farrelly, Colonel John McAnerney, John A. Sullivan; assistant secretaries at New York, John A. Sullivan, Patrick H. Mooney.

At a regular monthly meeting of the board of directors of the City Trust, Safe Deposit and Surety Company of Philadelphia, held in the city of Philadelphia on the ninth day of July, A. D. 1900, the following resolutions were adopted:

On motion of Dr. Baker, duly seconded by Mr. Richardson, Mr. William H. Kimball, of the city of New York, was duly elected a vice-president of the company, resident in the said city of New York, in the State of New York, with full power to execute in the name of the company, and to affix the corporate seal, and duly acknowledge the same, any and all bonds and contracts of suretyship that may be required and necessary to be executed in carrying on the business of the company, in the said State of New York.

On motion of Mr. Richardson, duly seconded by Mr. Banes, Mr. John A. Sullivan was elected as assistant secretary of the company, resident in the city of New York, in the State of New York, and empowered to attest the corporate seal of the company to any and all bonds and contracts of suretyship which shall have been previously signed by Mr. William H. Kimball, its resident vice-president,

in the conduct of the business of the company, in the said State of New York.

On motion of Mr. Banes, duly seconded by General Wagner, Mr. Patrick H. Mooney was elected as assistant secretary of the company, resident in the city of New York, in the State of New York, and empowered to attest the corporate seal of the company to any and all bonds and contracts of suretyship which shall have been previously signed by Mr. William H. Kimball, its resident vice-president, in the conduct of the business of the company, in the said State of New York.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

Patrick H. Mooney, assistant secretary of the City Trust, Safe Deposit and Surety Company of Philadelphia, *have* compared the foregoing resolutions with the originals thereof, as recorded in the minute book of the said company, and do- certify that the same are a correct and true transcript thereof.

Given under my hand and the seal of the company, this 11th day of January, A. D. 1901.

P. H. MOONEY,
Assistant Secretary. [SEAL.]

Statement of the City Trust, Safe Deposit and Surety Company of Philadelphia.

Incorporated 1886.

On the thirtieth day of June, 1900, the assets and liabilities of the company were:

Assets.		*Liabilities.*	
Cash on hand	$82,030.74	Capital stock	$500,000.00
Cash in banks	492,206.23	Surplus fund	150,000.00
Call loans upon collaterals	964,305.65	Reinsurance reserve	126,357.00
		Undivided profits	65,465.27
Time loans upon collaterals	404,660.00	Deposits	2,304,793.32
		Miscellaneous liabilities.	8,430.00
Loans upon bonds and mortgages	87,200.00		
Investment securities owned, stocks, bonds, &c.	423,130.50		
Real estate, furniture and fixtures	535,670.54		
Miscellaneous assets	165,841.93		
Total	$3,155,045.59	Total	$3,155,045.59

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

Patrick H. Mooney, being duly sworn, says that he is assistant secretary of the City Trust, Safe Deposit and Surety Company of Philadelphia, and that the above is a correct statement of the financial condition of the company on June 30, 1900.

P. H. MOONEY.

Sworn to and subscribed before me, this 11th day of January, A. D. 1901.

EMMA A. BENNETT,
[SEAL.] *Notary Public, Kings County.*

Certificate filed in New York county, #227.

53 [Endorsed:] United States district court, district of New Jersey. F. S. Bowker, managing owner of the schooner William H. Davenport, cross-libelant, appellant, against The United States of America, respondent. (Copy.) Bond on appeal of the City Trust, Safe Deposit and Surety Company of Philadelphia, dated the — day of ——, —. Carver & Blodgett, Convers & Kirlin, proctors for cross-libelant. Filed Jan. 14th, 1901, at 9 o'clock a. m. George T. Cranmer, clerk.

54 United States District Court, District of New Jersey.

F. S. BOWKER, Managing Owner of the Schooner William H. Davenport, Cross-libelant, Appellant,
v.
THE UNITED STATES OF AMERICA, Owner of the Light-house Tender Azalea, Appellee.
} In Admiralty.

Citation.

To the United States of America, appellee, Greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court, to be held at the city of Washington, in the District of Columbia, on the thirteenth day of February, A. D. 1901, pursuant to an appeal filed in the clerk's office of the district court of the United States for the district of New Jersey, wherein F. S. Bowker, managing owner of the schooner William H. Davenport, is cross-libellant and appellant and The United States of America, owner of the light-house tender Azalea, is respondent and appellee, to show cause, if any there be, why a decree in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties in this behalf.

Witness the Honorable Andrew Kirkpatrick, judge of the
55 district court of the United States for the district of New Jersey, this fourteenth day of January, A. D. 1901.

ANDREW KIRKPATRICK, *Judge.*

CONVERS & KIRLIN,
CARVER & BLODGETT,
Proctors for Cross-libelant and Appellant.

Service of a copy of the within citation acknowledged this fourteenth day of January, A. D. 1901.

DAVID O. WATKINS,
U. S. Attorney for the District of New Jersey.

56 [Endorsed:] United States district court, district of New Jersey. F. S. Bowker, managing owner of the schooner William H. Davenport, cross-libelant, appellant, *v.* The United States of America. Citation. Filed Jan. 14th, 1901, at 12 o'clock m. George T. Cranmer, clerk.

57 UNITED STATES OF AMERICA, } *District of New Jersey,* } *ss:*

I, George T. Cranmer, clerk of the district court of the United States for the district of New Jersey, do hereby certify that the foregoing is a true copy of certificate of Judge Andrew Kirkpatrick, libel, claim, stipulation for claimants' costs, stipulation for value, answer, cross-libel, citation, notice of motion, opinion, order to set aside citation and to dismiss cross-libel, petition for appeal, assignment of errors, bond on appeal, and citation, in the suit of The United States of America against The Schooner William H. Davenport—F. S. Bowker, managing owner of the schooner William H. Davenport, against The United States of America, owner of the light-house tender Azalea—as the same remains of record and on file in my office.

Seal District Court of the United States, District of New Jersey.

In testimony whereof I have hereto subscribed my name and affixed the seal of said court, at Trenton, in said district, this fourteenth day of January, A. D. nineteen hundred and one.

GEORGE T. CRANMER, *Clerk.*

{ Ten-cent United States internal-revenue stamp, canceled Jan. 14, 1901. G. T. C. }

58 [Endorsed:] United States district court, district of New Jersey. F. S. Bowker, managing owner of the schooner William H. Davenport, cross-libelant, appellant, against The United States of America, owner of the light-house tender Azalea, appellee. Copy. Certificate. Filed Jan. 14th, 1901, at 9 o'clock a. m. George T. Cranmer, clerk.

Endorsed on cover: (Certificate.) File No., 18,047. New Jersey D. C. U. S. Term No., 562. F. S. Bowker, managing owner of the schooner "William H. Davenport," appellant, *vs.* The United States, owner of the light-house tender "Azalea." Filed February 6, 1901.